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REPORT OF THE SECRETARY-GENERAL ON THE ESTABLISHMENT OF THE COMMISSION OF EXPERTS PURSUANT TO PARAGRAPH 2 OF SECURITY COUNCIL RESOLUTION 780 (1992)

I

1. In paragraph 10 of resolution 746 (1992) of 13 July 1992 the Security Council reaffirmed that all parties in the territory of the former Yugoslavia were bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, 1/ and that persons who committed or ordered the commission of grave breaches of the Conventions were individually in respect of such breaches.

2. On 13 August 1992, in its resolution 771 (1992) of 13 August 1992 the Security Council reaffirmed the international obligations flowing from international humanitarian law and the Geneva Conventions and the individual responsibility of those who committed or ordered the commission of grave breaches of the Conventions, and in paragraph 5 called upon States and international humanitarian organizations to collate substantiated information in their possession or submitted to them relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia and to make this information available to the Council.

3. By paragraph 2 of resolution 780 (1992) of 6 October 1992, the Security Council requested me to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992) together with such further information as the Commission of Experts may obtain through its own investigations or efforts with a view to providing me with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.

4. The present report is submitted pursuant to the request contained in paragraph 3 of resolution 780 (1992).

II

5. In considering how best to proceed in regard to the request of the Security Council contained in paragraph 2 of resolution 780 (1992), I have noted that the request parallels and to some extent duplicates an initiative of another United Nations organ, the Commission on Human Rights.

6. Members of the Security Council will recall that at its first special session, on 14 August 1992, the Commission on Human Rights adopted resolution 1992/S-1/1, in which it requested its Chairman to appoint a special rapporteur to investigate firsthand the human rights situation in the territory of the former Yugoslavia, in particular within Bosnia and Herzegovina, and to receive relevant, credible information on the human rights situation there from Governments, individuals, intergovernmental and non-governmental organizations, on a continuing basis, and to avail himself or herself of the assistance of existing mechanisms of the Commission on Human Rights. 2/ The Special Rapporteur visited areas of interest in the former Yugoslavia, and in particular Bosnia and Herzegovina, from 21 to 26 August 1992 and issued his first report on 3 September 1992. 2/

7. In establishing the Commission of Experts called for by the Council in paragraph 2 of resolution 780 (1992), I have naturally taken into account the mandate and work of the Special Rapporteur of the Commission on Human Rights with a view to minimizing the duplication of effort, maximizing the efficient use of scarce resources and reducing costs.

8. Pursuant to paragraph 2 of resolution 780 (1992) I have decided to establish a Commission of Experts to be composed, in the first instance, of five members, one of whom will be designated by me as its Chairman. In appointing the members of the Commission I shall, of course, pay due regard to their professional qualifications, in particular in the areas of human rights, humanitarian law as well as criminal law and prosecution, experience, integrity and absolute impartiality. I reserve the right to expand the membership of the Commission should this become necessary.

9. The members of the Commission will serve in their personal capacity.

10. The terms of reference of the Commission, as set out in resolution 780 (1992), will be to examine and analyse the information submitted by States, international humanitarian organizations, other persons or bodies pursuant to resolution 771 (1992), as well as such further information as the Commission may obtain through its own investigations or efforts, with a view to providing me with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. I expect that the Special Rapporteur of the Commission on Human Rights will cooperate closely with the Commission of Experts and provide it with all the information at his disposal. I shall take the necessary administrative steps to ensure continuing collaboration of the secretariats of the two bodies.

11. The Commission will adopt its own rules of procedure. In the absence of consensus, decisions of the Commission will be taken by a majority of the members present and voting.

12. The Commission, which for reasons of economy and efficiency will be located at the United Nations Office at Geneva, will be assisted by a small secretariat to provide the necessary substantive, secretarial and administrative assistance. To the extent possible and in order to avoid duplication, this secretariat shall rely upon the resources already made available to the Special Rapporteur of the Commission on Human Rights. In view of the urgency attached to this request by the Security Council, it is my intention to proceed as rapidly as possible to the appointment of the members of the Commission and the assignment of the appropriate Secretariat staff.

13. The expenses of the Commission of Experts will be met, as far as possible, from existing resources. I reserve, however, the right to seek new appropriations should circumstances make this necessary.

14. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 3/ will apply to the Commission, its members and its secretariat. The members of the Commission will have the status of experts on missions within the meaning of article VI of the Convention and the staff of the secretariat will have the status of officials within the meaning of articles V and VII of the Convention.

Notes

1/ United Nations, Treaty Series, vol. 75, Nos. 970-973.

2/ A/47/418-S/24516, para. 1.

3/ Resolution 22 A (I).